



Underground Storage Tank Cleanup Fund **UPDATE**



Winter 2005

UST Cleanup Fund Update Issue No. 14

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| Manager | Ron Duff |
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| Payments | Toru Okamoto |
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| Claims Review | Diana Romero |
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| Special Programs | David Ceccarelli |
| Accounts/Closure | Tanya Mock |

The Underground Storage Tank (UST) Cleanup Fund (Fund) Update is provided only as a general information guide and is intended to respond to many of the questions being asked about the Fund.

The information provided in this publication is not intended as legal advice.

We invite your comments and encourage written suggestions on how and what you would like to see in future issues of the Update. Suggestions and comments can be mailed to:

State Water Resources Control Board
UST Cleanup Fund
P. O. Box 944212
Sacramento, CA 94244-2120

Or e-mail:
ustupdate@waterboards.ca.gov

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New Cleanup Fund Manager

In December 2004, Ron Duff became the new Fund Manager for the Underground Storage Tank Cleanup Fund (Fund) in the Division of Financial Assistance. He replaces Allan Patton, who was previously promoted to Assistant Division Chief overseeing the Division's Cleanup and Administrative Branch.

Ron has worked in numerous programs within the State Water Resources Control Board since 1975. He has been with the Division since April 2003, serving as chief of a project development unit in the Loans and Grants Branch. Previously, he served as Chief of the Licensing Unit in the Division of Water Rights, and as Chief of the Ground Water, Well Investigations, Regulatory, Pretreatment, and Proposition 65 Units in the Division of Water Quality.

Ron is a licensed California Civil Engineer. He earned his Bachelor of Science degree in Civil Engineering from University of Texas, Austin.

Professional Licenses

The Fund will only reimburse for the activities of firms that are properly licensed and maintain necessary licenses for legal operations in the State of California.

Acceptable Professional Licenses:

The activities of professional engineers and geologists are subject to the provisions of the Business and Professions Code. Firms whose primary activity consists of geologic services must have a professional geologist as a partner or officer of the firm. A professional engineer must be an "owner, part owner, or officer in charge of the engineering practice" of an engineering business.

Acceptable professional licenses include:

- Professional Engineer (PE)
Professional Civil Engineer
Professional Petroleum Engineer
- Professional Geologist (PG)
- Certified Engineering Geologist (CEG)
- Certified Hydrogeologist (CHG)

Additional Information:

- State Board for Geologists and Geophysicists
<http://www.geology.ca.gov>
- State Board for Professional Engineers and Land Surveyors
<http://www.dca.ca.gov/pels>

Please note that it is the claimant's responsibility to hire qualified consultants and to follow applicable state laws in hiring licensed professional services.

Board Clarifies Permit Compliance Criteria

On October 21, 2004, the State Water Resources Control Board (State Water Board) adopted a precedential order in response to the Petition of Murray Kelsoe (WQ 2004-0015-UST) regarding participation in the Fund. The order concerns the permit-compliance eligibility criterion and permit waivers.

The order reaches the following conclusions: (1) To satisfy the permit-compliance criterion for purposes of the Fund, a claimant must obtain all Section 25284 permits required of the claimant, beginning from the time the applicable local agency starts issuing Section 25284 permits, (2) The permit-compliance criterion is not satisfied merely by a claimant obtaining a permit by the time the unauthorized release was discovered or when the Fund claim was filed, (3) A claimant's permit noncompliance with respect to former USTs at a site does not impact eligibility for a release from any new, properly permitted USTs at the same site, and (4) A claimant may seek a waiver of permitting requirements, but permit waivers authorized in Health and Safety Code Section 25299.57 are only available for permits that were required by January 1, 1990, and may not be used to excuse permit noncompliance after January 1, 1990.

Even though the order concludes that the Legislature intended a January 1, 1990, cutoff date for permit waivers, the State Water Board noted that this date may be too severe for many claimants to the Fund. This order directs the State Water Board staff to pursue legislation that would establish a later cutoff date for permit waivers and any other parameters for the issuance of permit waivers that are consistent with concerns of the State Water Board expressed in the order.

If you would like to review the Murray Kelsoe Petition, please visit our Web page for 2004 Water Quality Orders at <http://www.waterboards.ca.gov/resdec/wqorders/wqo04.html> and scroll down to WQ 2004-0015-UST. If you have any questions regarding this petition, please call 1-800-813-3863 (FUND).

RUST Loan Program

Loans for replacement or repair of underground storage tanks (RUST). The program helps owners and operators of small, independent USTs comply with new requirements.

Eligible Applicants: Small business owners or operators of underground petroleum storage tanks. Applicants must provide evidence that their site(s) is in current compliance. Applicants with multiple tanks on different locations must be in compliance.

Project work cannot begin prior to completion of a fully executed loan agreement.

RUST Grant Program

Grants for repair of underground storage tanks (RUST). The program helps owners and operators of small, independent USTs comply with new requirements.

Eligibility requirements:

- *Small business with fewer than 20 employees
- *Retail less than 900,000 gallons of gasoline annually
- *Must have owned or operated tanks prior to January 1, 1997

Project work cannot begin prior to completion of a fully executed grant agreement.

IUST Program

Grants to Small Businesses for underground storage tanks (USTs) installed after July 1, 2004.

Grant funds are for the following:

- Equipment required to monitor the UST's interstitial space.
- Enhanced Leak Detection testing requirements for the UST during and after installation.

A grant may be issued prior to tank installation or within 12 months following tank installation.

Contact Information
(916) 327-6976

Or Visit Us On The Web At:
<http://www.waterboards.ca.gov/cwphome/ustcf/rust.html>

*Emergency, Abandoned & Recalcitrant Program***EAR**

The Emergency, Abandoned & Recalcitrant Account Program provides funding to the Regional Water Quality Control Boards and local agencies to undertake corrective action at petroleum UST sites, which have had an unauthorized release under the following circumstances:

- (1) **Emergency** - Sites where immediate prompt action is necessary to protect human health, safety and the environment.
- (2) **Abandoned** - Sites where a responsible party cannot be identified or located.
- (3) **Recalcitrant** - Sites where the responsible party is unable/unwilling to take the required corrective action.

The EAR Account Program must recover expended funds from responsible parties.

As of June 30, 2005, the EAR Account has funded 33 sites and \$6 million has been paid to recipients.

*Commingled Plume Account Program***CPA**

The Commingled Plume Account Program was added to Chapter 6.75 of the California Health & Safety Code effective January 1, 1997. The CPA Program provides funds to eligible claimants who meet the eligibility requirements.

Commingle groundwater contamination plumes represent a special problem in California. The contaminated ground water plumes generally represent a more serious water quality impact where responsible parties disagree to shared liability and cleanups are conducted in a haphazard manner. The Commingled Plume Account Program provides funding for coordinated joint multi-site cleanups where commingled groundwater plumes exist.

The Commingled Plume Account Program receives an annual appropriation of \$10 million. As of June 30, 2005, the CPA Program has received 43 claim applications, 33 claimants have received Letter of Commitment funding and \$28 million has been paid to claimants. Article 11 and the CPA claim applications can be found on the Fund Web site.

*Orphan Site Cleanup Account***OSCA**

The Orphan Site Cleanup Account Program was added to Chapter 6.75 of the California Health & Safety Code effective January 1, 2005. It was created to encourage the cleanup of Brownfield petroleum UST contaminated sites where there is no financially responsible party. These sites represent a particular problem because they prevent and delay community redevelopment. The Orphan Site Cleanup Account Program will reimburse eligible applicants for cleanup efforts at these sites.

The OSCA Program will receive a \$10 million dollar annual appropriation for fiscal years 2005, 2006 and 2007. A fact sheet and timeframe for Program implementation can be viewed at the Fund Web site. The Program will sunset on January 1, 2008.

Contact Information**EAR, CPA & OSCA Programs**

Judy Reid

jreid@waterboards.ca.gov

(916) 341-5760

*If you'd like to receive future Updates
by e-mail, subscribe to the
UST Cleanup Fund
electronic mailing List*



[http://www.waterboards.ca.gov/lyrisforms/
swrcb_subscribe.html](http://www.waterboards.ca.gov/lyrisforms/swrcb_subscribe.html)

Dear Ron...

I'm unhappy with my current consultant, can you recommend someone else?

- ❖ If you are not happy with your current consultant and you would like to replace them, you should ask your local oversight agency for a list of consultants in your area, contact an applicable professional organization (see page 1), or consult the yellow pages. The State Water Board does not maintain a list nor does it recommend any particular consultants.

What do I do if I don't receive copies of cancelled checks from my bank?

- ❖ Some copies of bank statements may be used as proof of payment, provided they show detail of the payee and the amount of the check.
- ❖ Most banks microfiche copies of the actual checks and can provide you with a copy.
- ❖ Remember that most banks offer online banking and these services can be obtained online.

I am an eligible claimant to the Fund. Can I write checks from my other businesses or have someone else help pay for corrective action costs?

- ❖ Only the eligible claimant's costs can be reimbursed by the Fund. Since your other businesses or other entities have a different Tax ID, they are not the eligible claimant (entity) and are not allowed reimbursement. For an eligible claimant to be reimbursed for costs paid by any other entity, a written agreement stating that costs are being paid on behalf of the claimant must be reviewed and approved by the Fund **prior** to any checks being written by the other entity. The Fund can only accept costs paid by others **after** the date of the agreement.

Why does the Fund only allow 10 days to respond to requests for documentation? This timeframe does not allow for slow mail delivery or gathering of the necessary documents. Isn't it more reasonable to allow 30 days to respond?

- ❖ Most of our letters do allow a 20 to 30-day response time, however, when we do not receive a response or all of the necessary paperwork, another letter is sent with a 10-day timeframe as a courtesy. It may not be possible to comply within the allotted time, however in such cases you should call the reviewer at the number listed on the letter. To avoid receiving requests for additional documentation, carefully review our Guidance documents and instructions. These contain information and instructions that are crucial to the processing of your claim. Also, before submitting these documents please check for the following:
 - All UST forms must have the **Claimant's or Power of Attorney's** original signature.
 - Proof of payment
 - * Canceled checks must show the bank's encoding in the check's lower right corner.
 - Reports, directives and other supporting documentation must cover the time period for which you are seeking reimbursement.
- ❖ The Fund has guidance documents and instructions to help with the claims process, please contact your Claims, Payment, and/or Tech Reviewers for copies or see our Web site.

Need Information or a Form???

Don't forget that we're on the Web!

With a new design format and current Fund Information, Forms and Publications, we're sure you'll find just what you're looking for and more!

Visit us at:

<http://www.waterboards.ca.gov/cwphome/ustcf/index.html>



The Power of Attorney Form Has Been Revised

The Fund has revised the Power of Attorney form to be easier to use and reduce the possibility of incorrectly completed forms. The previous version of the Power of Attorney form may have contributed to numerous errors i.e. claimants' signatures not notarized and missing attorney-in-fact signatures. The form is available on our web page or by request.

<http://www.waterboards.ca.gov/cwphome/ustcf/claimformsinfo.htm>

We encourage claimants to sign all Fund documents personally. However, there may be circumstances where a claimant wants a representative to be able to sign Fund documents on the claimant's behalf. In this situation, the claimant must submit a notarized Power of Attorney form designating a specific representative to sign and submit documents to the Fund on the claimant's behalf. The designated representative should not be a consultant or contractor performing work on the project site because it would create a conflict of interest.

Claimants will be personally responsible for and bound by any assertions made to the Fund pursuant to a Power of Attorney.

Reimbursement Request Forms

Please use only Reimbursement Request forms issued by the Fund. These forms are provided to claimants only after a Letter of Commitment has been issued for a claim. The information on each form is specific to the claim for which it was issued, and therefore the forms should not be modified and submitted for other claims. Additionally, forms that are illegible or inaccurate may cause delays in processing. If you have been issued a Letter of Commitment and need additional forms, please call (916) 341-5722. Submittal of forms not issued by the Fund may result in processing delays or the return of your reimbursement request.

What's On The Fund's Web Site

<http://www.waterboards.ca.gov/cwphome/ustcf/index.html>

General Information will provide you with a short history/overview of the Fund, along with contact/region information and various other links.

Technical Forms & Information will give you access to the Fund's technical forms and cost guidelines and technical documents regarding the 3-bid requirements, California's Contractors' State Licensing Law, assistance with hiring consultants and contractors, and information regarding the pre-approval process for corrective action costs.

Statutes and Regulations will provide you with information regarding current statutes and regulations affecting the Cleanup Fund.

The **EAR Program**, **OSCA Program**, **Rust Program** and **IUST Program** all have their own links as well for more detailed information on each.

You will also find **Payment Information**, **Claim Information**, and **Financial Responsibility** links for your convenience.



*The UST Cleanup Fund
Has a Toll-Free Message Line*

1-800-813-FUND (3863)

Are You Moving?

Are you planning to move or have you already moved? If you have filed a claim with the Fund, it is important to notify us of your new mailing address and phone/fax numbers. If we do not have your correct mailing address, staff cannot contact you regarding your application, changes in regulations and changes to the payment process.

To request a Change of Address Form, contact the Fund. We will be happy to fax or mail the form to you, or you can download a copy of the form from our Web site.

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